INDEX

CASES CITED

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1942

RE JAMES M. WRIGHT, Debtor;
JAMES M. WRIGHT, PETITIONER,

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY, A CORPORATION, RESPONDENT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petition For Writ of Certiorari.

I.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.

1. This is a proceeding in bankruptcy under Section 75 and its amendment whereby subsection (s) was added August 28, 1935, concerning relief of farmer debtors.

(11 U.S.C.A. 20 a-r (s).

2. This petitioner, by his petition, seeks a review of the decision of the United States Circuit Court of Appeals of the Seventh Circuit, rendered February 14, 1942, against this petitioner, wherein he appealed from the District Court of the Northern Indiana District, which latter court refused to abide the appraise-

ment of said farm in 1938, of six thousand ($6,000.00) dollars which appraisement was part of the record in the Supreme Court of the United States reported in 311 U. S. 273.

3. Petition for re-hearing in this cause was denied this petitioner by the Circuit Court of Appeals March 23, 1942, after being seasonably filed, and this petitioner now files his petition in this court for review.

4. Said decision of the Circuit Court of Appeals of the Seventh Circuit is reported in 126 F. 2nd. 92, and a copy of said decision is made a part of this petition as an appendix hereto, at the end of petitioners brief.

5. This petitioner, by reason of the wrongful refusal of the respondent to observe the provisions of the Frazier-Lemke Law for relief of farmer-debtors, has been forced in all of his cases since his hearing in this court in 304 U. S. 502, including this petition, to appeal in the Circuit Court and this court as a poor person, and this wrongful continuance and carrying on of resistance to the law has served to impoverish this petitioner and prevented him from having any rest from continuous litigation, to procure the funds from timid money lenders to render to the respondent the six thousand ($6,000.00) dollar appraised value of the land.

6. This petition concerns only the two hundred (200) acre farm of petitioner in Jay County, Indiana, which has been in this court and certiorari granted herein and opinions handed down twice heretofore regarding it.

See Wright vs. Union Central Life Ins. Company, 304 U. S. 502, 82 L. ed. 1490. Decided May 31, 1938;

311 U. S. 273, 85 L. ed. 184. Decided Dec. 9, 1940, Rehearing denied Jan. 13, 1941.

7. This action concerns the rights of petitioner under the so called Frazier-Lemke Act for the relief of farmers in bankruptcy and this petitioner at all times heretofore has in good faith endeavored to comply with the terms of the said Frazier-Lemke Act, Sect. 75 of the Bankruptcy Act, (a), but that the respondent, Union Central Life Insurance Company, since the year 1934 has resisted all efforts made by this petitioner to procure the benefits of said Frazier-Lemke Act and at all times has announced that they would refuse to obey the law and that at every opportunity they would appeal every order of every lower court attempting to enforce the law.

8. October 21, 1938 a trial was had and evidence was heard on the appraisal of the value of farm of petitioner involved in this controversy. The value of the land was fixed by the court in special findings at six thousand ($6,000.00) dollars after trial in open court. The District Court ordered the land sold at public sale and the debtor appealed and the Supreme Court o fthe United States, December 9, 1940, reversed the lower court and held that the debtor had a right to redeem at the appraised value. After the second mandate of the Supreme Court of the United States reversing the District Court of Northern Indiana, the latter court atempted to reappraise the land in controversy, at the sum of ten thousand eight hundred and thirty-two ($10,832.00) dollars.

9. That on the 6th. day of June 1941, in answer to the petition of respondent in the District Court, for a re-appraisal of the farm, this petitioner thereupon filed in opposition thereto his verified showing as follows:

"Comes now James M. Wright, the Debtor in said cause and respectfully represents to the Court the following:"

(a) "That until December 9th, 1940, the Court and said Creditor refused to allow him to redeem the 200 acres, described in his cross-petition and the proceedings herein."

(b) "That said Court and the Creditor required him to pay the full amount of said debt of over $16,000.00 for said land which the Court found was worth only $6,000.00. That hence, he could not redeem on said basis and did not undertake it. On December 9th, 1940, the Federal Supreme Court in Wright vs. Union Central, the parties herein, held that he had the right to redeem said land at said $6,000.00 and that he should be discharged of the balance of said debt above said value."

(c) "That on account of said litigation and the demand that he pay said whole debt or lose said land it was impossible for him to prepare to redeem at said fixed value."

(d) "That hence the time preceding said decision of said Court should not be counted against him and his three year period of redemption should not begin to run until the date of said decision."

(e) "That this Court is required to allow a "reasonable time". That it will require three crops on said land to enable him to obtain a loan large enough to take care of said $6,000.00. That on account of the uncertainty of producing crops and the prices he can realize for said crops, it will require said three crops to make redemption sure."

(f) "That a "reasonable time" as intended by Congress in passing said Acts for the relief of "distressed farmers" and as interpreted by said Supreme Court in said Wright and other recent decisions and cases in said Court, three seasons would be a "reasonable time". That the Courts

all hold that such a time means enough time to prepare for and actually redeem said land. The right to redeem will be defeated if time enough is not given to redeem. In giving the right to redeem the Supreme Court in said Wright case meant that these remedial Acts should be liberally construed and time enough given to enable the debtor to save his home. The Supreme Court in giving the right to redeem intended the Debtor should be given ample time to do so and did not intend the right should be defeated by cutting the time too short. And that he should be rehabilitated, even though all the property he had was his equity in his land. Wherefore he asks the Court to hear evidence on said fact as to what would be a "reasonable time" under the circumstances in this case and to fix said time at three crop seasons and all other relief, in the premises."

(R. Filing 41)

(R. Petition 44-45).

10. This petitioner says that he always has been refused the right to redeem the said land at the appraised value of six thousand ($6,000.00) dollars, which is the value that was before this Supreme Court of the United States as shown in the transcript of that cause and that this petitioner, because of the contumacious attitude of the respondent in refusing to accede to the law, never has been able to take advantage of said appraised value of six thousand ($6,000.00) dollars and that inasmuch as said appraised value was determined after trial and hearing in 1938 of evidence in the District Court on petition of the respondent and cross-petition of the petitioner, he has been denied his rights under the law and inasmuch as no good cause was ever shown for reappraisal of said land, the respondent, Union Central Life Insurance Company, is bound by said sum of six thousand ($6,000.00) dollars so set in said appraisal which was before this Supreme

Court in 1940, and respondent is now estopped to try to take advantage of its own wrong in litigating these questions to a point where it has become an attempt to strip this petitioner of every right he has and every penny he can raise to defend this litigation and the respondent should not now be allowed to wrongfully deprive petitioner of his legal rights by unnecessary and vexatious litigation.

11. No appeal was taken by the respondent from said appraisal of six thousand ($6,000.00) dollars in the District Court and it is the claim of this petitioner that said valuation is the law of this case as an estoppel in equity except on some showing of extraordinary nature greatly increasing the value thereof, which never was shown to be the case.

12. This petitioner contends, briefly stated, that the respondent is bound by said appraisal of six thousand ($6,000.00) dollars because respondent, failed to appeal from said valuation as mentioned in Wright vs. Union Central Life Insurance Company, for a re-appraisal, and at all times has refused and failed to do equity and recognize the Frazier-Lemke Law and has litigated this petitioner unnecessarily on every point and every step of the case and this petitioner contends that therefore, during said unjust and inequitable actions of respondent, he is entitled to have the time toll in his favor and to have the benefit of such delay from such unjust acts counted in his favor so that the time will not be considered to have run against him.

13. Inasmuch as this is an equity cause in bankruptcy, equity requires an orderly procedure and appeals will not be allowed in piecemeal, and the respondent not having appealed from the valuation of six thousand ($6,000.00) dollars, in the last hearing in this court in 1940, and that sum being the value at that

time, and the trial as to that matter being in that record in this Supreme Court, no good cause having been shown for a re-appraisal, that valuation was finally settled as final, and will not be disturbed and equity and good concience will not permit the respondent to vexatiously litigate this matter forever.

14. The provision of the Frazier-Lemke Law providing a three year moratorium for the debtor to get his affairs in shape to redeem his farm, means three years of surcease and peace from appeals, and reviews and their great costs and injury and this petitioner contends and respectfully asks the court especially to rule, in its opinion in this case, as to whether this petitioner is not entitled to have the time toll in his favor as to the part of said three years in which respondent has litigated petitioner, and where such time so engaged in appeals and reviews as in this cause, should not be added to the time which this petitioner has under the law to redeem his farm, because otherwise the respondent will be permitted to profit from its own wrong in forcing this litigation on this petitioner.

15. This petitioner says that this is an unusual case embracing an important question of federal law which has not been, but should be, settled by this court, and is a federal question which has been decided in conflict with applicable decisions of this Court, and said lower courts have departed from the accepted and unusual course of judicial proceedings so as to call for an exercise of power of supervision of this court.

16. This petitioner says that the judgments and decrees of the District Court for the Northern District of Indiana and of the United States Circuit Court of Appeals of the Seventh Circuit are erroneous and contrary to law and equity and should be reversed.

17. Your petitioner says that this Honorable Court

should require said cause to be certified to it for review and determination, in conformity with the provisions of the Acts of Congress in such cases made and provided.

II.

ERRORS RELIED UPON FOR ALLOWANCE OF THE WRIT.

The question at issue herein is whether the valuation and appraisal of petitioners farm after issues tendered by both sides, trial and evidence heard October 21, 1938, judgment rendered, in the District Court, appeal by petitioner to the Circuit Court on another question, cereiorari granted in the Supreme Court, hearing and opinion there Dec. 9, 1940, can later be set aside by the District Court without just cause after the case comes back, and the appraisal increased to $10,832.00?

III.

STATEMENT OF JURISDICTION.

1. Petition for review is sought under the Bankruptcy Act, Sec. 75 and sub-section (s). (20 U.S.C. 20, a-r (s)

2. The writ requested is to the U. S. Circuit Court of Appeals, 7th. Circuit in the appeal decided against petitioner Feb. 14, 1942, petition for re-hearing was seasonably filed and denied March 23, 1942. See Wright v. Union Central Life Ins. Co., 126 Fed. 2nd. 92.

3. Certiorari is petitioned for herein under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, which gives this court jurisdiction of this petition.

WHEREFORE, Your petitioner respectfully prays that a writ of certiorari may be issued out of

and under the seal of this court, directed to the United States Circuit Court of Appeals of the Seventh Circuit, commanding and directing said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Circuit Court of Appeals in said cause entitled James M. Wright, Debtor, James M. Wright, v. Union Central Life Insurance Company, No. 7818, to the end that said cause may be reviewed and determined by this court as provided by law, that the order of said court be reversed, and that petitioner have such other and further relief or remedy in the premises as to this court may seem appropriate and in conformity with law. And your petitioner will ever pray.

JAMES M. WRIGHT, Petitioner

Morton S. Hawkins,
Portland, Indiana,

Solicitor for Petitioner.

STATE OF INDIANA
COUNTY OF JAY, SS:

James M. Wright, being first duly sworn on his oath, says that he is the above named petitioner and that the facts recited above are true.

JAMES M. WRIGHT.

The above named James M. Wright, known to me, duly acknowledged the above affidavit on this, the 17th day of June, 1942.

My commission expires: Dec. 1, 1944.

WHEELER ASHCRAFT,
Notary Public.

IV.

SUPPORTING BRIEF.

1. The decree of the District Court Jan. 30, 1939, made on special findings of facts and conclusions of law, appraising petitioners farm at $6,000.00, became finally and conclusively adjudicated by reason of the judgment of this court Dec. 9, 1940, on that record. (Wright v. Union Central Life Ins. Co., 311 U. S. 273, 85 L. ed. 184). (See Record, p. 20, par. 14)

2. The valuation of petitioners farm at $6,000.00, no appeal or review having been taken by Union Central Life Ins. Co., from it in the last appeal to this court, is final binding and impregnable to subsequent attack, the Frazier-Lemke Law not contemplating any re-appraisal after appeal.

Bankruptcy Act. par. 75, 11 U.S.C.A. par. 203;

Bernards v. Johnson, U. S. 62 S. Ct. 30, 86 L. ed. 14.

Re Bumpass, (Nov. 10, 1940) 23 F. Supp. 876 (Tex.)

3. This petitioner is entitled to have his three year moratorium period run from the date of the last decision of this Supreme Court in this matter, to wit, from Dec. 9, 1940, thus extending his moratorium at least to Dec. 8, 1943, unless this court believes that it should be extended to start from its decision of certiorari in this review.

Wright v. Logan, U. S.

(Feb. 2, 1942) 62 S. Ct. 508; 86 L. ed. 443.

4. The respondent, Union Central Life Insurance Co., having refused and failed to appeal from the order of 1939 valuing the farm at $6,000.00, the same

being in the record of the case later reviewed in this court, (as we understand), it is bound by that record and, later, cannot, for purpose of delay, re-open the matter and take advantage of it's own wrong and again litigate the matter after affirmance of the record in 1940 in this court. All questions that could have been raised on the last appeal will be deemed to have been finally concluded and set at rest.

Moran v. Washington Ry. & El. Co., (App. D. C.) 73 F. 2nd. 384;

Western U. Tel. Co., v. Czizek, (C.C.A. Idaho) 286 F. 478;

Reversed by this court on other grounds, 43 S. Ct. 700, 262 U. S. 739, 67 L. ed. 1208.

Raydure v. Lindley, (C. C. A. Ky.) 268 F. 338.

Guaranty Tr. Co. v. Int. Steam Pump Co., (N. Y.) 242 F. 920.

5. This court held that this petitioner has the right to redeem the farm at $6,000.00 but the respondent and the District Court have consistently refused to carry out the terms of the law and give this petitioner a three year moratorium from litigation, giving him surcease from this costly litigation and time and opportunity to re-finance himself.

311 U. S. 272, 85 L. ed. 184 (Dec. 9, 1940)

304 U. S. 502, 82 L. ed. 1940 (May 31, 1938)

(both of above appeals of this matter)

ARGUMENT

The undersigned counsel for petitioner has not had access to the record in this matter in the Circuit Court, nor of adequate data concerning the same.

This court granted petitioner certiorari in this matter in 1938 and in 1940. James M. Wright is now 82 years of age and, as a good American citizen and man of the soil, he cannnot understand nor did he know that a matter could be litigated to the end of eternity, if one side wishes it.

To use a slang expression, he did not know that the respondent, in litigating this matter, could always have "an ace up its sleeve" to pull out any time it needed to use it, to wit, a re-valuation. Equity should not permit this subterfuge. To permit this fraud on this court and petitioner, would allow respondent to profit from its own wrong.

There should be an end to litigation. Respondent has won all matters submitted in the District and Circuit Courts, lost all in this court. This matter should be ended by this court finding that petitioner is entitled to three years moratorium at least from the end of this litigation, or from the date of this court's last mandate, Dec. 9, 1940, at the appraised value of $6,000.00.

Evidently James M. Wright has been selected as the guinea pig for use of the opponents of the Frazier-Lemke Law to try to render it ineffective and useless. They have used their large funds for this purpose. They have selected this poor old man because of his poverty and age; his inability to move around among money lenders with seductive and honeyed promises. They preferred to select this old man in his last days as the best subject. They thought they could win easier.

The District Court, in rendering judgment on issues and evidence appraising the farm at $6,000.00, said in part:

"And this cause having been brought on to be heard upon the petition of said Petitioner (respondent here), and the Court having heard the evidence and argument of Counsel and having rendered its special findings, and finding of fact and conclusions of law thereon, and having filed the same herein, the Court now and hereby RENDERS ITS JUDGMENT on said findings and conclusions as follows: (Then follows appraisal value of $6,000.00) See Record, p. 24. (Our caps and description of "Petitioner")

After the above judgment, the matter came into this court on petition of this petitioner Wright. If respondent, who procured the above appraisal, was not satisfied with it, it was their duty to make the same a part of that appeal, timely. But no, they kept the "ace up their sleeve" for future use to nullify any mandates of this court. This appeal is for the purpose of reversing those tactics.

This Supreme Court, in its opinion of Dec. 9, 1940, regarding the above adjudged appraised value, said:

"This Act (Section 75 and subsection (s) of August 28, 1935) provided a procedure to affectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt" - - - A "broad design of the Act to aid and protect farmer debtors who were victims of the general economic depression" - - - "We think that the denial of an opportunity for the debtor to redeem at the value ($6,000.00) before ordering a public sale was reversible error" - - - "There is no constitutional claim of the Creditor to more than that. And so long as that right is protected the Creditor certainly is in no position to insist that doubts or ambraguaities in the Act be resolved in its favor and against the debtor. Rather the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (John Hancock Mut. L. Ins. Co. vs. Bartels supra; Kalb vs.

Feuerstein 308 U.S. 433 84 L. Ed. 370 - - -) lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

Wright v. Union Cent. Life Ins. Co., 311 U. S. 273, supra.

CONCLUSION

Under the theory presented by the Circuit Court of Appeals and the respondent, this case could never be ended because respondent easily could, every time the mandate from this Supreme Court comes down, file some paper in the District Court, upon which that court would rule favorably to respondent, thereupon forcing petitioner to take another appeal at great expense and hardship in his old age and weakened physical condition.

We trust that we have presented this matter understandingly.

Not only old James M. Wright but thousands of distressed farmers over this United States are affected by this case. It is the final test as to whether the Frazier-Lemke Law is to be nullified by vexatious, expensive, useless and wrongful appeals by inequitable acts of mortgage creditors. And all of those folk owning mortgaged farms and James M. Wright are praying that this court initiate some procedure in an opinion in this review whereby farmer-debtors in distress may have a **bona fide** moratorium and surcease and rest from costly and useless litigation, so they can have quiet and peace to get their house in order and pay off the appraised value of their farm and not be litigated until death from trusting in law and the courts.

And it is the prayer of James M. Wright that he be given such relief and surcease from this litigation favorably that he will not be forced to conclude that

"This is the court of chancery; which has its decaying houses and its blighted lands in every shire; which has its worn-out lunatic in every mad-house, and its dead in every churchyard; which has its ruined suitor, with slipshod heels and threadbare dress, borrowing and begging through the rounds of every man's acquaintance; **which gives to money might the means abundantly of wearing out the right**; which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honorable man among its practitioners who will not give - - who does not often give - - warning, "suffer any wrong that can be done you, rather than come here!' in such a court on that dismal day the case of Jarndyce and Jarndyce is dragging its weary way."

Dickens' "Bleak House".

And we respectfully urge that James M. Wright has never had a bona fide moratorium of three years under the law, as shown by the distressing record of this case, and that he should have a writ of certiorari issue and the errors corrected in the courts below.

Respectfully submitted,

MORTON S. HAWKINS,

Solicitor for Petitioner.

Portland, Indiana,

May 17, 1942,

Appeal From This Judgment In The

United States Circuit Court of Appeals

For the Seventh Circuit

126 F. 2nd. 92

No. 7818. October Term, 1941, January Session, 1942.

In the Matter of
JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, a Corporation,
Appellee.

Appeal from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division.

February 13, 1942.

Before Evans, Sparks, and Kerner, Circuit Judges.

Evans, Circuit Judge. This appeal, in a farmer-debtor proceeding, involves the construction of the Supreme Court opinion and mandate, announced in a former appeal in this same bankruptcy proceeding. Wright v. Union Central Insurance Co., 311 U. S. 273, modifying 108 F. 2d. 361.

The instant appeal deals with bankrupt's asserted legal right to redeem his farm, within a reasonable time, at an earlier appraised price of $6,000, notwithstanding a later appraisal of $10,832 has been made.

The debtor contends that the $6,000 determination is res adjudicata,* and he has an absolute right to redeem at that price. The creditor argues that under Sec. 75 (s) (3), providing for a reappraisement on application of debtor or a creditor, the reappraisement in this case was proper. This statute reads:

> (1) "Provided, that upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments * *."

Two questions involving appraisement of a debtor's property, under said section, are involved. They are: (1) Upon a proper fact disclosure, may a second (or a third or a fourth) appraisal of a farmer-debtor's property be had under Sec. 75 (s)? (2) Under the facts in this case, where the Supreme Court has ruled on appellant's right to redeem, at said $6,000 appraisal, may there be a reappraisal and a value of $10,832 accepted as the basis of redemption?

The issue presented to the Supreme Court, on the former appeal, and by it s e t t l e d, was this: A debtor has an absolute right to an appraisal and reasonable time thereafter to redeem, as aginst a creditor whose claim is secured by a mortgage on debtor's property, notwithstanding the debtor has continuously refused for several years, to comply with the order of the court which directed him to pay mortgagee, part of his crop each year.

The Supreme Court held that debtor's right to purchase at the appraisal price was superior to the

*We think the law of the case better describes appellant's reliance.

mortgagee's right to sell the property upon a showing that debtor refused to pay the taxes or any part of the crops as rental or use of the property by him possessed. (2) The parties are not agreed as to whether the Supreme Court also held that the appraisal price was fixed at $6,000 and could not be increased thereafter. This is the question now before us.

The former appeal which resulted in the Supreme Court decision, the interpretation of which provokes the present controversy, arose in this manner:

In 1915, a mortgage of $9,000 was placed on the farm involved in the litigation. Foreclosure of this mortgage was instituted in 1934, and in the same year the debtor filed his petition and secured an adjudication under Sec. 75 of the Bankruptcy Act. After the conciliation commissioner's report had been approved, wherein it was stated there was no possibility of conciliation, debtor was adjudged a bankrupt and, in the same month, the foreclosure decree was entered, the indebtedness being then $11,975.

The same year the land was sold under the foreclosure decree to mortgagee for the amount of its indebtedness. On October 30, 1935, the trustee named by the court below leased the property to the debtor for two-fifths rental. Thereafter, for four years, debtor remained in possession of the property, but refused to pay any part of the rent, and also refused to pay any taxes. After a dispute between the State Court and the U. S. District Court over right to possession was decided by the Supreme Court (304 U. S. 502) in favor of jurisdiction of the bankruptcy court, the real estate came under the undisputed control of the trustee.

The creditor then sought a dismissal of proceedings in said bankruptcy court. Its motion was denied. In 1938, debtor filed petition for appraisal, and

to be allowed, within a reasonable time (March, 1940) the right to redeem at the determined appraisal price. This was nearly six years after the date of the sheriff's sale on the state foreclosure decree. Mortgagee, on the other hand, sought leave to sell the premises because of the debtor's refusal to comply with the order of the court directing payment of rent. It relied on Sec. 75 (s). The district court directed the sale. Debtor appealed.

This court, on November 3, 1939, approved the District Court's order directing a sale of the premises at public auction, pursuant to prayer of mortgagee, because of refusal of debtor to make any rental payment as ordered by the court. The Supreme Court decided the case, December 9, 1940, and held that the creditor's right of a sale, because of debtor's failure to comply with the order for the payment of rent (or share of crops) as consideration for his remaining in possession for said five years, was subject to the debtor's paramount right to an appraisal, and the occupancy of the premises for a further time during which debtor was to have the right to redeem at the appraised price.

Debtor has since continued in possession of the property, without paying cash or share of crop as rent, and without paying taxes. He has kept possession of the premises for eight years without payment of rent or taxes and in defiance of the order of the District Court. In so doing, he relies on the approval of the Supreme Court decision, and he now insists that the appraisal heretofore fixed cannot be changed because of said Supreme Court decision.

After the return of the mandate, creditor petition the District Court for a reappraisal of the property. Against debtor's protest, testimony was received. An appraisal of $10,832 was made. The amount of creditor's mortgage at that time exceeded $16,000.

The doubt which provokes the present controversy is over the effect of the Supreme Court decree which gave the debtor the right to redeem. Did it also unchangeably fix the price at which redemption might be had? In other words, did the Supreme Court fix the amount at which debtor could redeem, at the sum of $6,000? Or, was he, or the creditor, entitled, upon a proper showing, to a reappraisement?

Determination of these questions, naturally divides itself into (1) May there, under any circumstances, be a reappraisement? (2) If so, is the right to reappraisement in the instant case lost, or barred, by reason of the holding of the Supreme Court?

Our conclusion as to the first query is, that neither party is bound by the first appraisement. The court, in the interest of justice, can, and should, make a reappraisement, if the facts warrant it. No express statutory authorization for a reappraisement would be necessary. It is inherent in equity principles. Moreover, we think the statute authorizes reappraisals.

On behalf of a debtor, it is easy to conceive of instances where buildings were burned, or damages from lightning, floods, or other causes have materially lessened the value of the premises. Fairness to the debtor would require a reduction in the redemption price, that is in a reappraisement.

On the other hand, if the circumstances show an increase in the value of land during the years which the debtor is in possession, fairness to the creditor also requires a reappraisement.

It is likewise easy to conceive of a case in this circuit where, during that three year period, oil might be discovered underlying the surface of the land possessed by the debtor. To permit debtor to remain in

possession for three years (in this case eight years) without the payment of taxes or any sum for the use of the premises, would be highly inequitable and unfair to the creditor—unless a reappraisement were had.

A fair construction of the statute would seem to permit of a change in appraisal, if the facts warrant or require it. And this is so regardless of who is helped or hurt by the reappraisement.

This brings us to the second question. In this particular case, because of the Supreme Court decision, is a reappraisement impossible? In other words, is the $6,000 appraisal final, due to application of the law of the case, or, as appellant argues, because it is res adjudicata?

We turn, therefore, for guidance, to the language of the Supreme Court, so far as it applies to the appraisal value of $6,000. The Supreme Court said:

> "The court held a hearing at which evidence was adduced. It found, inter alia, * * that the value of the property was $6,000, * *"
>
> "We think the denial of an opportunity for the debtor to redeem at the value fixed by the court before ordering a public sale was error. * *"
>
> "Safeguards were provided to protect the rights of the secured creditors, throughout the proceedings, to the extent of the value of the property. * * There is no constitutional claim of the creditor to more than that."
>
> " * * if the debtor did not redeem pursuant to that procedure, he would not get the property at less than its actual value. * *"
>
> "We hold that the debtor's cross petition should have been granted; that he was entitled to have the property reappraised or the value fixed

at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have a reasonable time, fixed by the court, in which to redeem at that value; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted. Only in case the debtor failed to redeem within a reasonable time would the court be authorized to order a public sale."

We can not believe the Supreme Court, in this opinion, was passing upon the amount of the appraisal. It gave the debtor a chance to redeem, notwithstanding his failure to make rent payments for the use and occupancy of the farm. That is all. It was not considering the amount of the appraisal or the right to a new appraisal. As to the amount, it stated factually that the District Court had heard evidence, and a sum had been stated which was the District Court's finding of the then value of the premises.

The amount (or the court's finding of value) was not in controversy. The value of the farm, or the court's appraisal of the farm, was not in issue. The only issue was the creditor's right to a sale of the farm because of debtor's default in rent, which issue involved, and was dependent upon, the debtor's alleged superior right to redeem at the appraised price. The redemption right—not the price of redemption—was the issue. There was no adjudication upon the value of the farm or the redemption price.

It follows from what has been said that neither party was barred from a new appraisal in this case by the decision of the Supreme Court, or by the statute. The facts in each case must guide the court. Equity alone measures the court's power.

The order of the District Court is

Affirmed.